court seemed influenced by the doctrine, upon which the Massachusetts court based its decision in a similar case, that the plaintiff's right is based on an implied warranty of title. *Boston, etc., Co.* v. *Richardson*, 135 Mass. 473. This doctrine is unnecessary for the decision and seems unsupportable.

BOOKS AND PERIODICALS.

"OLD TIMES AT THE LAW SCHOOL." — In the Atlantic Monthly for November Samuel F. Batchelder, LL.B., 1898, gives an extremely interesting account of the foundation of law instruction in Harvard University, and a brief history of the Law School from its beginning in 1817, to 1870, with an excellent characterization of the various members of the Law Faculty during that period.

The opening paragraphs call attention to the striking group picture of Isaac Royall and members of his family, and describe a bequest in Royall's will, executed in 1778, which endowed the first Professorship in Law in Harvard College. "In the middle of the line of pictures hanging between the delivery desks in the reading-room of the Harvard Law School is a striking group of three-quarter length figures that suggests a Copley, but is in reality the work of Feke, a young Newport Quaker of about a century ago. A stiff red-coated gentleman stands at a table surrounded by admiring female relatives. He is Isaac Royall, Brigadier-General of the Province of Massachusetts Bay, member of the Council, staunch upholder of King George. His magnificent old mansion in Medford is still standing, and of its owner it is comfortably recorded that 'no gentleman of his time gave better dinners or drank costlier wines.' But after the Battle of Lexington, like a good Tory, he followed the British to Halifax, and thence to England, where he died." The group portrait is described on the back of the canvas as follows: "drawn for Mr. Isaac Royall whose portrait is on the foreside. Aged 22 years 13th inst. His Lady in blue. Aged 19 years 13th instant. Her sister Mrs. Mary Palmer in Red. Aged 18 years 22d of August. His Sister Penelope Royall in Green. Aged 19 years 25th of April. The Child, his Daughter Elizabeth 8 months 7th instant. Finished Sept. 15th 1741 by Robert Feke."

Royall's gift remained idle until 1815, when Isaac Parker, Chief Justice of Massachusetts, was appointed Royall Professor of Law. He held the position till 1827. In 1817 Professor Parker recommended to the Corporation the establishment of a school for the instruction of students at law under the patronage of the University. Accordingly the Corporation at a meeting held May 14, 1817, voted "that some counsellor, learned in the law, be elected to be denominated University Professor of Law; who shall reside in Cambridge, and open and keep a School for the Instruction of Graduates of this or any other University, and of such others, as, according to the rules of admission as Attorneys, may be admitted after five years' study in the office of some counsellor." The duties of the University Professor were outlined at this meeting, together with the privileges to be accorded to the students, and it was voted that the action of the Corporation be laid before the Overseers for their approval. This action of the Corporation marks the foundation of the Harvard Law School, a new department of the University. Hon. Asahel Stearns was chosen first University Professor.

The article gives a sketch of Professor Stearns, from which the following is taken: "Professor Stearns was much more than first University Professor of Law in the new School. He was the entire faculty. His office, in Harvard Square, was the School; and, as good Dr. Peabody sententiously remarks, 'a building, a library, and an organized faculty were essential to make the School attractive.' Some apologies for the first two were presently provided in a very old, low-studded building on the site of the present College House, where a so-called lecture-room, and an equally dubious library were fitted up. But the

number of law students rarely rose above eight or ten, and in 1829 had actually run down to one. At this stage Mr. Stearns naturally resigned."

A clear account is then given of the founding of the Dane Professorship, and of the condition named by the founder, Nathan Dane, namely, that Justice Joseph Story, of the United States Supreme Court, should be the first professor to fill the chair. "At the same time the Royall Professorship was filled by John H. Ashmun." Professor Ashmun died in 1833. He is described as perhaps the most brilliant figure in the whole history of the School. "The Royall Professorship, thus sadly vacated, was accepted by Simon Greenleaf, reporter of the Supreme Court of Maine."

"The School soon broadened into national reputation. In three years the need of better quarters became imperative, and again Mr. Dane came forward with a large contribution and a temporary loan of more." In 1832 Sumner wrote: "Dane Law College (situated just north of Reverend Mr. Newell's church), a beautiful Grecian temple with four Ionic pillars in front, — the most architectural and the best built edifice belonging to the college, was dedicated to the Law." "In 1845 the growth of the School required an addition to Dane Hall. Accordingly the long transverse portion of the present fabric was built and opened in 1845, with brilliant ceremonies." The Law School Circular of 1893 contains cuts showing the various changes made in the building from 1832 to 1883, when the School was removed to Austin Hall.

The following glimpse of Story in the lecture-room by G. W. Huston, L. S. 1843, is of great interest: "In the winter of '42 Mr. Webster and Lord Ashburton, accompanied by Lord Morpeth, were at Cambridge a length of time settling the Maine boundary question. These three men were in the habit of attending Judge Story's lectures, — access to the library being what brought them to Cambridge. After an exhaustive consideration of some point, when Judge Story had told what Lord Mansfield thought of it, and Chief Justice Marshall's opinion, and when Lord Morpeth had listened with his lips open and his heavy eyelids closed in a negative attitude, for he had inherited gout of many generations, Story would suddenly turn to the old Lord, sitting on a bench with the students, and inquire, 'and what is your opinion, my lord?' Morpeth would suddenly change his whole countenance, gather up his lips and his eyebrows, his eyes sparkling, and would deliver an exceedingly interesting opinion on the point under consideration." To this may be added the following, written of Story by an old alumnus of the School: "I often see him in my mind's eye, walking briskly into the recitation room when behind the hour; his white hat according so well with the white hairs (few in number) which it covered; his ruddy, shining face, sown with wrinkles of good humor, or smiles which seemed embedded in the skin. He would take his seat in a free and sociable manner, as though about commencing a pleasant *tête-à-tête* with the classes. In a moment all were attention. His thin gold spectacles would emerge from some mysterious hiding-place and jump upon his nose, soon to be removed and put on at pleasure, serving at times to accompany his hand in a graceful gesture. The book before him would open, and with it his small mouth — that threshold of legal wisdom guarded with perfect and regular teeth, through which issued words of fascination, sent out to lodge in many a haunt of memory. 'Who commences first, to-day?' inquired the Judge one morning. 'Mr. —— or myself, — either you please,' replied a senior member. 'Ah!' replied the Judge, 'either is a very good answer except in the case where a justice in Ireland said to two men (one of whom was to be transported and the other executed), which of you is to be hanged?'

"Two portraits of Story hang in the School, both noticeable for the moonlike red face and its aspect of extraordinary benevolence." One of these portraits was painted by the famous artist William Page. He copied it from a portrait which he painted of the Judge five years earlier. He incorporated into this copy some important suggestions of Judge Story's son, Mr. William W. Story, and the copy proved more successful than the original. It was hung in Dane Hall, April 20, 1846. The funds to pay for the portrait were raised at the

suggestion of Professor Greenleaf by voluntary subscriptions of the students. The original subscription list signed by sixty-three students is in the Harvard Law Library.

Judge Story died in 1845, and Professor Greenleaf resigned in 1848, because of failing health, having performed almost all the work of the School from the death of Story. The Dane Professorship was then accepted by Theophilus Parsons, of Brookline. The Royall Professorship was filled in 1847 by the appointment of Joel Parker, Chief Justice of New Hampshire. In 1855 the University Professorship was revived by the exertions of Professor Parsons, who secured the appointment of Emory Washburn, of Worcester, who was at that time just quitting the Governorship of Massachusetts. Those who had the honor and privilege of knowing the last three named, Parsons, Parker, and Washburn, will not be content without reading all that Mr. Batchelder has said of them. J. H. A.

RIGHT OF MAJORITY STOCKHOLDERS TO TRANSFER ENTIRE CORPORATE PROPERTY. — An important question bearing on the legality of combinations of capital is whether the majority of the stockholders of a prosperous private corporation have the right to transfer its entire property against the will of the minority. The American authorities upon the subject are collected and commented upon in a recent magazine article. *Right of a Private Corporation to transfer Property*, by Gordon Paxton, 8 Va. L. Reg. 1 (May, 1902). The writer found no decision recognizing this right. He states, however, that "while the courts have practically denied the power, they afford a very inadequate remedy against the formation of trusts, since no one can generally complain except a non-assenting stockholder," and he can usually be bought up. The article is to be commended for its very valuable collection and summary of authorities. But the author's conclusion that the law is in the unfortunate condition in which the violation of a right is recognized and yet no adequate remedy provided, seems inexact and suggests a possible misconception of the theoretical basis of the question.

Combinations of capital are usually effected by the creation of a new corporation to which several existing corporations transfer their entire property, receiving in exchange stock of the new company for distribution among their shareholders. Assuming the existence of a dissenting minority in any of the corporations thus consolidating, the legality of the transaction depends, in the first place, upon the authority conferred upon corporations by the state to transfer their entire property for such a purpose, and, secondly, upon the authority which the majority have received from the individual shareholders to represent them in such a matter. If the latter authority alone be denied, the non-assenting stockholders are obviously the only parties deserving a remedy. The cases collected by Mr. Paxton show that this hypothesis exists in fact, and they thus prove, contrary to his conclusion, that courts do give a remedy commensurate with the violation of the right in issue. The difficulty with his position seems to lie in a failure to recognize that the majority's right to act springs from the enumerated two sources.

Whether the power to transfer their entire property for purposes of combination has been impliedly conferred on corporations by the state, is a question rarely passed upon by the courts. The power has never been denied by actual decision. In the few cases where courts specifically considered the question, no large combination of capital was attempted and only private interests were involved. The decisions accordingly are not conclusive that such a power exists. Indeed language by courts is to be found where its existence appears to be denied. See *People* v. *Ballard*, 134 N. Y. 269.

To determine the extent of the implied authority conferred by the individual shareholders upon the majority, a business view must be taken as to the situation of the parties to the agreement of incorporation. In many respects the majority must be considered as empowered to act; for otherwise corporate business would be impossible. One clear limitation, however, is that the ma-